G. R S. IX-5]

Previous references.

File No. 224

1917.
(Mis)

Serial Nos.
Mis papers

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

Part B for March 19

SUBJECT.

Alienation of inams granted to public services of religions or charitable purpose

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File
Into G.A.
13.3.19

W D 1250—GPB—30,000 28-1-19

G. R. S. 11] 1917. 8

GENERAL AND REVENUE SECRETARIAT.

(Inam)

NOTES.

7 L-1
File No.

FILE HEADING.

Alienations of inams granted for public services a religious or charitable nature are absolutely void unless made with the sanction of Govt.

From

No.	Dated	Received
Diary No.	Enclos. Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

The last para of the opinion of Counsel contained in page 26 of the office-note of
Muznai
J. No 772-08 relating to the restoration of the inam Village of Jammanadahalli to Sri Ullai matt is to the effect

NOTES—First Sheet.

WD 1233—GPB—60,000—1 12-16—S

Serial No.

effect :—

Legislation may be undertaken to declare that alienations of inams granted for public services of a religious or charitable nature are absolutely void unless made with the sanction of Govt and to make it clear that the operation of Section 14 of the Inam. Regulation is of a limited character and that it does not in any way affect the Inam Rules of 1874.

Inam. Secy's orders at page 25 of the office-note :—

After issue of orders, the question refd. to in the last para of Resolution will be taken up.

Orders directing the restoration of the inam Village of Tammapandathakallu were issued in memo no 560 Dy 31-8-1917 and the file is re-submitted for orders

Submitted with a copy of Inam Regln & Rules thereunder

IV(1)
24.9.1917 ann

May this be transfd to Branch III for necessary

29/9/17

Secy)

25/9/17

WD 1233—GPB—60 000—1 12-16—5

G. R. S. III-2]

General and Revenue Secretariat | File No. 824 of 191

Serial No

The Asst. Secy will please make a draft with alterations to be suggested by Br III

Sd
10/10

I have put up a draft suggesting the addition of an explanation to §14, and of a new Section 30A regarding the powers of a Mathadhipathi to alienate. A brief note of objects and reasons is also given.

Secy)
Sd 11/10/17

PS Another draft substituting a new Section for Section 14 and making a consequential addition in §24 is also submitted.

Sd 12/10/17

Please retain and put up the file relating to the Mys. Regn for Br III

Sd 12/10/17
Sd 13 10 17

To Branch III for kindly putting up the required file

16/10/17

Please send a requisition for Regn 38-11 (A collection of manuscript

to the GL Records

27/10/17

Hrng Regn No 610 8/11/17

GL JUDICIAL OCT 1917

NOTE—Contn sheet

G R. S. III-2]

General and Revenue Secretariat.

File No. 224 of 191/.

Serial No.

The required file obtained from the Genl Records & put up.

Submitted

6/11/17 Secy.) 7/11/17

[illegible]

27.8.'18

These papers may be recorded. The question of the amendment of the Regs is under active work in this Secrett and the file with Mr Chamier's Agenda Note has been sent to his member on 7.3.19

10/3/19

May these papers be recorded?

10/3/19.

Secy.)

11/3/19

11/3/19

N O T E.

Subject:-- The applicability of Section 8 et seq of the Muzrai Regulation to the properties of Muzrai institutions before direct management is assumed by Government.

------:0:------

The Muzrai Regulation is a new enactment and to have a clear idea of its scope and intention, it seems to be necessary to go behind the more wording and ascertain the objects which the Regulation was intended to aim at. At page 8 of the Legislative File No.38 of 1911-12, a synopsis of these objects is given to which was subsequently added a chapter about Mathas. To explain the scope of the provisions, a full statement on the objects and reasons was added together with --what is rarely done-- explanatory notes on the various clauses.

2. From the statement it is seen that the Regulation was intended to devise means for the better management of religious and charitable institutions in the State. As regards Muzrai institutions a recognition was given to the rule that 'the State Muzrai Department has under its control all institutions which enjoy an endowment in any form from Government' and the statement

proceeded to point out the necessity that exists for the intervention and control of Government in all cases of mismanagement of private charity and how the provisions contained in Section 92 of the Civil Procedure Code is inadequate for the purpose. In fact this may be considered to be the main purpose of the Regulation, all the new provisions therein Sections 3 to 13 being devoted to this object. The occasion was taken advantage of to codify the existing practice relating to certain matters concerning Muzrai Institutions, such as the appointment of Dharmadarsis, recovery of arrears of rent and appointment of Pujaris. As regards other matters relating to these institutions, no change in the powers of executive officers or in the procedure appear to have been contemplated. Even in matters actually touched upon in the Regulation, it was understood that the existing rule and procedure were not to be abrogated, vide Report of the Select Committee as regards Section 14 of the Regulation. So far as the Muzrai Institutions are concerned, the Regulation appears to be one of partial consolidation of the existing orders, but no change, much less restriction, in the powers and procedure of officers appears to have been contemplated.

3. Three classes of institutions are

stated to have been included within its scope, viz. Muzrai Institutions, institutions founded by private charity and Mat In the succeeding paragraphs of the state-ment the nature of provisions relating to these classes individually is particularized, and it will be seen that the provision for enquiry for purposes of assuming management is brought exclusively under matters concerning 'institutions established solely by private charity.' It is worthy of note that these institutions when taken up under Government management are 'to be managed as State Muzrai institutions' from which an inference that the Section does not affect Muzrai Institutions as such, seems to be justifiable.

4. Again in Section 8 a qualifying clause is introduced after the word institution, viz. 'dedicated for the benefit of the public or a defined section of the public.' This would appear to indicate that the Legislature had in view only cases of trust founded by private charity the Government taking power to act only in cases where the trust is public or quasi-public. It would obviously be inapplicable to Muzrai Institutions whose public character has, so to say, been recognized by virtue of the help rendered to it from public revenues. This inference is further supported by the Notes on

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clauses prefixed to the draft Regulation wherein Clause 8 is said to refer 'to cases in which the constitution of the trust is not disputed but gross and persistent mismanagement is alleged.'

5. In this connection I may be permitted to state with due deference to the framers of the Regulation that the draught-ing of Chapter II is to some extent faulty. A distinction was introduced in the Regulation as regards Muzrai Institutions and other religious and charitable institutions, but this does not seem to have been kept in view throughout. Some of the provisions though made applicable generally to all religious and charitable institutions can have reference only to Muzrai institutions, e.g. Sections 14 to 17 and Section 20. Per contra Sections 8 to 11 and Section 13 appear to have reference only to private institutions. plenary powers in these directions being always vested and exercisable by the executive officers as local agents of Government who may be considered to have an inherent right thereto as the de jure managers of all Muzrai Institutions.

6. It is perhaps unnecessary here to examine in detail the traditional and customary right of Government to interfere suo motu in the details of the internal administration of Muzrai institutions. Even during the days of the

British Commission this right was well recognized and frequently acted upon and this practice was reviewed by the Chief Court in a Full Bench case Appajia Vs. Beera Gowda, Vol. XVIII Mysore Law Reports. In the course of the judgment the Chief Judge Mr. T. R. A. Thambu Chetty remarked:--

> "It will be seen, from the foregoing brief summary of the orders issued, from time to time, that the Revenue Officers (Amildars Assistant Commissioners and Deputy Commissioners) had the management and control of all temples (private or public) which enjoy-ed any Inam from Government either in land or money, and that their orders were subject to revision by Government. Questions relating to successions to Mutts and Pujari rights, were also entrusted to the Muzrai Officers for decision subject to appeal to Government."

This opinion was referred to with approval in a subsequent Full Bench case before the Chief Court, Mallegowda Vs. Kodi Sidda, *Vide page 257 et seq.* The Mysore Law Report Vol XII.

7. Since the rendition and particularly after the Government assumed the direct administration of the Department in 1891 it has become a well-established doctrine and executive action has repeatedly been

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taken to conserve the properties and improve the usefulness of Muzrai Institutions whether or not they were actually under the direct management of Government.

8. In the recent orders regarding the reorganization of the Muzrai Department, the Government seem to have acted wholly upon this view, it being assumed as an accepted rule that Government have full discretionary powers to regulate the supervision and control over the work of all Muzrai Institutions and their finances. If there should be any doubt at all regarding the legality of this conclusion, it seems to be a case for early action to set the doubt at rest, if need be by a revision of the Regulation. In another connection the Government have already directed the drafting of an amendment to Section 14 of the Regulation to bring it in conformity with the Chief Commissioner's Notification of 17th November 1877. If need be advantage may be taken of the occasion to amend the other Sections as well, so as to remove all doubts. It is also a matter for consideration whether it will not be an advantage to further amplify the Regulation with a view to bring under its scope other matters relating to the Regulation and control of Muzrai Institutions.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE,

GENERAL AND REVENUE SECRETARIAT

Bangalore. Dated 12th July

No. R 891 / L.R 165-17 40

From

B. RAMASWAMAIYA, Esq., B.A., B.L.,

Secretary to the Government of His Highness the Maharaja of Mysore,

Revenue Department.

To

K. R. Srinivasa Iyengar, Esq., M.A.,

Revenue Commissioner in Mysore.

SIR,

With reference to your letter No.C.3150 dated 27th April 1918, pointing out the inconsistency between the provisions of the late Chief Commissioner's Notification No.266 dated 17th November 1877 and Section 14 of the Muzrai Regulation in re: the resumption of Devadaya Inams, and soliciting definite instructions regarding the appropriate application of each provision, I am directed to inform you that the question of amending Section 14 of the Muzrai Regulation suitably, so as to make it clear that its operation is of a limited character and that it does not in any way affect the Inam rules of 1877, is under the consideration of Government and orders will issue in due course.

I have the honor to be,

Sir,

Your most obedient servant,

Ashtamachendra Rao

For Secretary to Government,
Revenue Department.

Submitted to The Secretary for kind perusal

13-7-18

TMK2.

GRSM. 641

Copy to Br VII with the files relating to their Branch -

Submitted for perusal.

BG 12.7.18

Seen. The files may be returned to their place.

MS 17/7/18.